

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

REGINALD EVANS,

Petitioner,

vs.

CHUCK DWYER,

Respondent.

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Case number 4:04cv1195 TCM

MEMORANDUM AND ORDER

Pending in this 28 U.S.C. § 2254 action is the motion of petitioner, Reginald Evans, for the appointment of counsel. [Doc. 11] Petitioner explains in his motion that he is financially unable to retain counsel; he has, despite diligent efforts, been unable to obtain counsel; and he lacks the necessary knowledge to answer Respondent's motions or requests.

There is no constitutional or statutory right to appointment of counsel in habeas corpus proceedings. See **McCall v. Benson**, 114 F.3d 754, 756 (8th Cir. 1997); **Hoggard v. Purkett**, 29 F.3d 469, 471 (8th Cir. 1994). "[I]nstead, [the appointment of counsel] is committed to the discretion of the trial court." **McCall**, 114 F.3d at 756 (alterations added). Where the issues involved can be properly resolved without an evidentiary hearing, the court does not abuse its discretion in denying a request for appointment of counsel. See **Hoggard**, 29 F.3d at 471.

Petitioner is seeking habeas relief from an aggregate 25-year sentence imposed following his guilty plea to seven felonies. In his cogent, legible petition, he raises two grounds: (1) his trial counsel was ineffective for failing to investigate his mental history background, ascertain his competency, and maintain a defense of mental disease or defect

and (2) his post-conviction counsel was ineffective for failing to insure he received an evidentiary hearing on his post-conviction counsel. Respondent argues that the first ground is without merit and the second is not a cognizable claim.

At this stage of the proceedings, the issues raised in the petition appear to be appropriate for resolution without an evidentiary hearing. Petitioner's motion for appointment of counsel will be denied.

Accordingly,

IT IS HEREBY ORDERED that Petitioner's motion for appointment of counsel is **DENIED**. [Doc. 11]

/s/ Thomas C. Mummert, III
THOMAS C. MUMMERT, III
UNITED STATES MAGISTRATE JUDGE

Dated this 16th day of May, 2005.